

ESTTA Tracking number: **ESTTA268729**

Filing date: **02/25/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91187260
Party	Plaintiff Gary Post
Correspondence Address	Julie Dalke Latham & Watkins LLP 650 Town Center Dr. , Suite 2000 Costa Mesa, CA 92626 UNITED STATES ipdocket@lw.com, Anna.Kwan@LW.com, Adam.Kummins@LW.com
Submission	Withdrawal of Opposition
Filer's Name	Julie Dalke
Filer's e-mail	ipdocket@lw.com
Signature	/Julie Dalke/
Date	02/25/2009
Attachments	Scan001.PDF (5 pages)(187635 bytes)

TRADEMARK CO-EXISTENCE AGREEMENT

This Agreement (the "Agreement") is entered into and made effective as of **January 28, 2009**, by and between Gary M. Post, a United States citizen having an address at 1840 Century Park East, Suite 800, Los Angeles, CA 90024, United States ("Ambient"), and Ambianta SGR SPA, an Italian company having a principal place of business at Via Larga, 2 I-20122 Milano, Italy (the "Applicant").

WHEREAS, Ambient owns registration of the trademark "AMBIENT" (the "Ambient Mark"), U.S. Registration No. 2577413 in International Class 36 (the "Registration");

WHEREAS, Ambient provides, primarily in the United States though not necessarily limited thereto, financial analysis and consultation services in the field of capital growth and restructuring, mergers and acquisitions, strategic alliances, joint ventures and licensing agreements, company financing, investments, financial structuring and restructuring and dividend policy; financial investments in the field of securities, investment banking services in the field of underwriting, agent services, and investment advisory services (collectively, the "Ambient Services");


WHEREAS, the Applicant has filed applications in the United States to register "AMBIENTA" in International Class 36, Application Serial No. 79/045549 and "AMBIENTA ENVIRONMENTAL ASSETS & Design" in International Class 36, Application Serial No. 79/049033 (collectively, the "Applications");

WHEREAS, the Applicant is a fund management company which focuses primarily on the sale and allocation of investment funds in the Environmental Sector (as defined in Annex 1 attached hereto) at the institutional level (collectively, the "Applicant Services"); and

WHEREAS, the parties now wish to resolve all potential disputes between them arising from the possible use by each of the respective marks in connection with the respective services.

NOW, THEREFORE, in consideration of the promises and mutual agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The above recitals are an integral part of this Agreement.
2. Ownership and Registration. Both parties acknowledge that Ambient is the sole owner of the Ambient Mark and the Registration.
3. Limitations on Use.
 - 3.1 Limitation on use for the Applicant.
 - (a) The Applicant shall provide services under the Applications (and thereafter under the AMBIENTA marks as described above) only to institutional investors (e.g.



banks, pension funds, family offices, etc.) and shall operate on a “business to business” level, without providing services to the general public, on a “business to customers” basis.

(b) The Applicant shall not provide services with respect to investments in any field other than in the Environmental Sector.

(c) The Applicant shall not provide any financial advisory services to the general public, on a “business to customers” level, under the AMBIENTA mark or any other mark which incorporates the terms AMBIENT and/or AMBIENTA.



(d) The Applicant shall not use the mark AMBIENT in any form.

3.2 Limitation on use for Ambient.

(a) Ambient shall not use the mark AMBIENTA in any form.

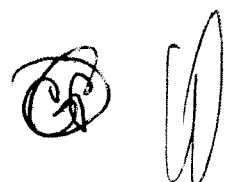
4. Withdrawal of Opposition. Ambient shall withdraw its Opposition No. 91187260 within thirty (30) calendar days of execution of Agreement by the Applicant.
5. Actual Confusion. Ambient and the Applicant covenant and undertake to use, in good faith, their respective trademarks (as referred in the recitals) in order not to generate confusion among the general public in respect of the services provided by each party. However, in the event that any instance of actual confusion should come to the attention of any party as a result of the concurrent use of their respective marks, the parties shall take prompt action to correct any such misunderstanding, avoiding interference.
6. No Partnership. This Agreement does not make any party hereto the agent of the other, or create a partnership or joint venture between the parties, and the Applicant shall have no power to obligate or bind Ambient in any manner whatsoever. No party hereto shall hold itself out contrary to the provisions of this Section 6 by advertising or otherwise. This Agreement shall not be construed to be for the benefit of any third party.
7. Entire Agreement. This Agreement contains the entire understanding of the parties hereto relating to the subject matter herein and supersedes any prior verbal or written, express or implied, agreements or representations between the parties, and this Agreement may be amended or modified only by a writing executed by an authorized signatory of Ambient and by the Applicant. No provision of this Agreement shall be interpreted against any party because such party or its legal representative drafted such provision. A waiver of any provision hereof shall not be construed as a waiver thereof for the future or of any other provision. If any provision hereof shall be adjudged by a court to be void or unenforceable, the same shall not affect any other provision hereof, or the validity or enforceability of the remainder of this Agreement.
8. Indemnification. Ambient agrees to indemnify and hold harmless the Applicant from and against any claim, loss, liability or expense, including reasonable attorneys’ fees, arising out of or in connection with Ambient’s breach of any representation, warranty or agreement under this Agreement. The Applicant agrees to indemnify and hold harmless

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Ambient from and against any claim, loss, liability or expense, including reasonable attorneys' fees, arising out of or in connection with the Applicant's breach of any representation, warranty or agreement under this Agreement. The indemnitor shall have the right to control the defense of any third party claim and to approve in advance any settlement thereof.

9. Confidentiality. Without the consent of the other party, neither party shall disclose, publish or release any non-public information pertaining or related to this Agreement to the public, or to any other third party, except that the parties may disclose such information to (a) their officers, directors, employees, agents, accountants, and legal advisors in the course of their duties or services, or (b) in response to any media inquiry, the parties may say that the dispute between the parties has been amicably resolved. Further, at no time shall the Applicant or the officers of Ambient acting in their capacity as officers of Ambient knowingly or intentionally say or do anything to disparage the other party with respect to matters related to this Agreement. Any breach or alleged breach of this Section 9 shall entitle the non-breaching party the right to injunctive relief and/or to a claim for damages by the non-breaching party, but will not release either party from performing its duties and obligations set forth in this Agreement.
10. Attorneys' Fees. In the event of any action or proceeding by either party arising out of this Agreement, whether sounding in tort, contract or otherwise, the prevailing party in such action or proceeding shall be entitled to recover from the other party reasonable attorneys' fees and costs, whether or not such action or proceeding is pursued to a final judgment, in addition to any other relief rewarded by the court.
11. Territory. This Agreement shall apply to the United States and all U.S. territories.
12. Jurisdiction and Venue. Any legal action or proceeding relating to this Agreement shall be submitted to the exclusive general jurisdiction and venue of the federal and state courts of California located in Los Angeles, California. Each party hereby consents to such jurisdiction and waives any objection that it may now or hereafter have (a) to the venue of any such action or proceeding in any such court, or (b) that such action or proceeding was brought in an inconvenient forum and agrees not to plead or claim the same.
13. Jury Trial Waiver. Except as prohibited by law, each party hereto hereby waives any right it may have to a trial by jury in respect of any litigation directly or indirectly arising out of, under or in connection with this Agreement, any document or agreement entered into in connection herewith or any of the transactions contemplated hereby or thereby.
14. Governing Law. This Agreement and all matters or issues collateral thereto shall be construed, governed by and interpreted in accordance with the laws of the State of California applicable to contracts executed and performed entirely therein.
15. This Agreement is binding on the parties and their respective affiliates, and the successors and assigns of each.

Handwritten signature and initials in black ink, located at the bottom right of the page.

16. This Agreement may be executed in one or more counterparts and by facsimile transmission, each of which shall be deemed an original, but all of which together shall constitute one instrument.

AGREED TO AND ACCEPTED:

By:



Gary M. Post

AMBIENTA SGR SPA

By:



Name: Giuseppe Tronchetti Provera

Title: Amministratore Delegato

Annex 1

The “Environmental Sector” shall be defined as any company whose current and/or prospective business activities are characterized by technologies and/or products and/or services which may:

- (i) reduce the production of greenhouse gases; or
- (ii) improve energy efficiency; or
- (iii) limit emissions that are deemed harmful to the environment and/or people; or
- (iv) improve the use of water resources; or
- (v) reduce the production of or improving the management of waste.

Handwritten signature and initials, possibly "BP", enclosed in a circle.